

The opinion in support of the decision being entered today was *not* written for publication in a law journal and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte CHARLES R. SPERRY and
SUZANNE SCOTT

Appeal No. 2006-2616
Application No. 10/057,067
Technology Center 1700

Decided: August 30, 2006

Before KIMLIN, KRATZ, and GAUDETTE, *Administrative Patent Judges*.
KRATZ, *Administrative Patent Judge*.

DECISION ON APPEAL

This is a decision on appeal from the Examiner's final rejection of claims 1-10 and 33. We have jurisdiction pursuant to 35 U.S.C. § 134.

BACKGROUND

Appellants' invention relates to an inflatable web formed from two sheets having inner surfaces sealed to each other in a pattern so as to define inflatable chambers. The sheets include longitudinal flanges that extend beyond the location of inflation ports of the inflatable chambers and intermittent seals forming such chambers. The longitudinal flanges include a

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pair of open and unsealed edges. Appellants disclose that the inflatable web is constructed such that an inflation nozzle can move longitudinally between the flanges to inflate the series of chambers sequentially. An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

An inflatable web comprising:

a) two sheets having inner surfaces sealed to each other in a pattern defining a series of inflatable chambers of predetermined length, each of the chambers having at least one change in width over their length;

b) an inflation port located at a proximal end of each chamber, said inflation ports being formed by intermittent seals between said sheets; and

c) longitudinal flanges formed by a portion of each of said sheets that extend beyond said inflation ports and intermittent seals, said flanges having a pair of open, unsealed edges.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Jostler	US 5,733,045	Mar. 31, 1998
De Luca	US 6,410,119	Jun. 25, 2002

Claims 1-10 and 33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over De Luca in view of Jostler.

We refer to the Brief and Reply Brief and to the Answer for a complete exposition of the opposing viewpoints expressed by Appellants and the Examiner concerning the issues before us on this appeal.

OPINION

Having considered the entire record of this application, including the arguments advanced by both the Examiner and Appellants in support of their respective positions, we find ourselves in agreement with Appellants' position in that the Examiner has not met the burden to show, *prima facie*, that the applied prior art renders the subject matter of the rejected claims obvious within the meaning of 35 U.S.C. § 103(a). Accordingly, we reverse the rejection advanced by the Examiner. Our reasoning follows.

Like Appellants, De Luca is concerned with forming an inflatable web that is useful in an inflated state as a bubble wrap in packing applications. The Examiner correctly notes that De Luca discloses using two sheets having inner surfaces sealed to each other in a pattern to form inflatable chambers in the web. The Examiner (Answer, page 3) maintains that De Luca provides longitudinal flanges formed by portions of the sheets. The Examiner seemingly refers to the portion of the sheets forming an inflation channel of De Luca (31, Fig.'s 1 and 2) as corresponding to the claimed flanges. In this regard, De Luca 's inflation channel (31, Fig.'s 1 and 2) extends along one side of the length of the web. De Luca (column 5, lines 53 and 54) discloses spaced apart seals (33 and 35, Fig. 1) that define the inflation channel (31).

The Examiner notes that the flanges of De Luca do not include a pair of open, unsealed edges, as here claimed. To make up for that acknowledged difference in the claim subject matter over De Luca, the Examiner additionally relies on Jostler. Jostler is directed to a web product that includes pockets (26, Fig. 1A) that can be opened and filled with material. Edge regions (24 a and 24b, Fig. 1A) of the web walls that form the pockets of Jostler are displaced to a position away from each other to open the pockets for filling the same.

The Examiner asserts that “it would have been obvious to one of ordinary skill in the art at the time the applicants’ invention was made to have modified the longitudinal flanges of the inflatable web in De Luca to have a pair of open, unsealed edges as suggested by Jostler et al. in order to inflate the chambers by way of another method” (Answer, page 4). We cannot agree with the Examiner’s stated obviousness position.

Jostler is not concerned with forming a web having inflatable chambers therein. Nor does Jostler disclose a method for inflating such chambers, much less an inflation method that would have suggested a modification of De Luca’s inflatable web, including the sheet edge regions forming the web channel (31) of De Luca. *See, e.g.,* pages 9-16 of the Brief. Moreover, as Appellants further note in the Reply Brief, the Examiner’s assertion of an artisan’s capability of effecting the proposed modification is not sufficient to make out a *prima facie* case of obviousness absent a reasonable suggestion/rationale for the proposed modification having been

established by the Examiner. In this regard, the teachings of Jostler respecting a web containing pockets and a method of filling the pockets with material so as to obtain packaged material has not been shown by the Examiner to address any particular problem or solution to a problem that would have led one of ordinary skill in the art to a modification of the uninflated web of De Luca. Nor has the Examiner articulated another persuasive rationale for the proposed modification.

We note that the web of De Luca is inflatable so as to form a bubble wrap product that is useful for surrounding and protecting goods being shipped inside an outer shipping container. As explained by Appellants (Brief, page 13) the Examiner's proposed modification of De Luca would result in an inflation channel that does not include a seal line (33, Fig. 1) at the outermost edge thereof and would not perform the air pressure regulation desired by De Luca. *See* column 6, lines 46-55 of De Luca.

The Examiner has not established how Jostler would teach or suggest a modification of De Luca that would require a change in the basic way the inflatable web of De Luca is designed for inflation. In this regard and as we previously noted, Jostler is concerned with a web used for forming material filled pockets; that is, pockets that are to be filled with goods. Jostler does not teach the formation of a web including inflatable chambers and /or a method for inflating such chambers. On this record, we reverse the Examiner's stated obviousness rejection.

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CONCLUSION

The decision of the Examiner to reject claims 1-10 and 33 under 35 U.S.C. § 103(a) as being unpatentable over De Luca in view of Jostler is reversed.

REVERSED

TF
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